

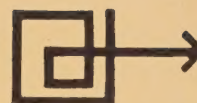
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# FAIR HOUSING IN SANTA CLARA COUNTY

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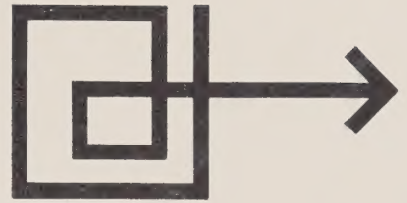
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# PLANNING POLICY COMMITTEE OF SANTA CLARA COUNTY

Room 314, County Administration Building, 70 West Hedding Street, San Jose, Calif. 95110 (408) 299-2521



April, 1973

Because of your concern and involvement in housing issues in Santa Clara County, we are transmitting to you the attached report, Fair Housing in Santa Clara County. The report has been prepared for the Joint Cities-County Housing Element Program by Stuart Deutsch of the University of Santa Clara Law School, and contains recommendations made by the Housing Advisory Committee of the PPC. The report does not necessarily represent the position or policy of the Planning Policy Committee or any member jurisdiction.

The Planning Policy Committee has authorized publication at this time for public review and discussion. This report and its recommendations will be considered by the Planning Policy Committee in a public meeting in late May, at which time the public will be given an opportunity to present testimony.

This report reflects the Planning Policy Committee's continuing commitment to seeking joint approaches to countywide housing problems, and is intended to help further understanding of the legal and institutional issues in the field of fair housing. We urge your review, commentary and assistance in developing a countywide position on this important topic. Inquiries about the report or the public meeting should be addressed to the housing staff of the County Planning Department, Room 314, County Administration Building, 70 West Hedding Street, San Jose, CA 95110, phone: 299-2521.

Jerome A. Smith, Chairman  
Planning Policy Committee

JAS:BF:ml

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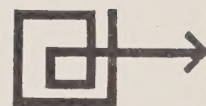
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# FAIR HOUSING IN SANTA CLARA COUNTY



*The Joint Cities-County Housing Element Program:*

**CITIES:**

Campbell  
Cupertino  
Gilroy  
Los Altos  
Los Altos Hills  
Los Gatos  
Milpitas  
Monte Sereno  
Morgan Hill  
Mountain View  
Palo Alto  
San Jose  
Santa Clara  
Saratoga  
Sunnyvale

COUNTY OF SANTA CLARA

**PLANNING POLICY COMMITTEE OF SANTA CLARA COUNTY: JEROME A. SMITH, CHAIRMAN**

The preparation of this report was financed in part through a comprehensive planning grant from the Department of Housing and Urban Development, under the provisions of Section 701 of the Housing Act of 1954, as amended, and through the auspices of the Council on Intergovernmental Relations, State of California.

PUBLISHED BY THE COUNTY OF SANTA CLARA PLANNING DEPARTMENT: 70 WEST HEDDING STREET, SAN JOSE, CALIFORNIA 95110



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This report was prepared by the Fair Housing Study Group of the University of Santa Clara, Stuart L. Deutsch, Assistant Professor of Law, Director, Father Richard Roberts, Associate Professor of Political Science, Co-Director, under a grant from the County of Santa Clara Planning Department. The report has been prepared for the Joint Cities-County Housing Element Program of the County of Santa Clara. The preparation of this report was financed in part through a comprehensive planning grant from the Department of Housing and Urban Development, under the provisions of Section 701 of the Housing Act of 1954, as amended, and through the auspices of the Council on Intergovernmental Relations, State of California.

#### ACKNOWLEDGMENTS

I would like to thank the faculty, students and interviewees whose contributions and work made this project and report possible.

Father Richard Roberts, Associate Professor of Political Science and Co-Director of the study and Eugene Lehr, Assistant Professor of Sociology were important and invaluable sources of assistance, advice and knowledge.

Frank Mangan, second year student at the University of Santa Clara Law School, helped prepare drafts of much of the report. Robert Freudenberg, William Hotz, Cole Cannon, Don Pieracci, Pete Baumgartner, Joe DeBriyn, Edward Miller, Anita Foster, Randy Christison, David Johnson, Mary Jo Levinger, and George Stanbury, law students, and Kathy Winn, Rich Walker, Jane Slenkovich, Michael Lynch, David Stafford, Michael Moore, Frank Elia, Mark Laubach, Ron Palmeri, Louise Aiello, Janet Taormina, John Orr, and Bruce Owdom, undergraduate students at the University of Santa Clara performed the basic research and interviewing necessary for this study.

I would especially like to thank the many persons who cooperated with and helped the study by agreeing to be interviewed or by supplying valuable information and insights.

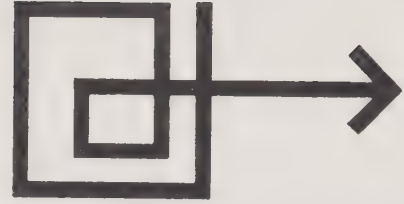
Finally, my wife Elizabeth played her normal crucial role keeping me as sane and diligent as possible under the circumstances.

Needless to say, all errors are my own.

Stuart L. Deutsch  
Fair Housing Study Director

# PLANNING POLICY COMMITTEE OF SANTA CLARA COUNTY

Room 314, County Administration Building, 70 West Hedding Street, San Jose, Calif. 95110 (408) 299-2521



## FAIR HOUSING IN SANTA CLARA COUNTY

### RECOMMENDATIONS ADOPTED BY HOUSING ADVISORY COMMITTEE

#### Recommendation 1:

*We urge the County to cooperate in establishing a nonprofit Housing Center such as was suggested by Social Concerns in Housing. This Center would act in several ways relevant to fair housing.*

A. The Center would act as a countywide agency to receive complaints concerning alleged housing discrimination in the County under the Unruh and Rumford Acts of the State of California, the U.S. Civil Rights Act of 1866 and Title VIII of the 1968 Civil Rights Act. The Housing Center staff would hear and evaluate complaints and would refer the complaints to the appropriate agencies for the most expedient action. If appropriate, staff members would assist the complainant to prepare and file his complaint and would assist his preparation for the FEPC or HUD investigation and "conciliation, conference and persuasion" procedures.

Needless to say, this function would necessitate regular publicity and close ties with the minority communities in the County.

B. The Center would act as a coordinator and planner for the activities of the many private organizations which have expressed interest in becoming active in aspects of fair housing problems. The staff could maintain a regularly-updated directory of organizations, offer financial aid and educational materials and information to the organizations and offer a location for meetings, seminars and other educational programs to be offered by the organizations and the Center.

C. The Center would act as a rental referral service for members of those groups which have been subject to a regular pattern of discrimination within the County. Landlords would be encouraged to register their complexes with the Center, with the Center sending prospective tenants to those registered. Incentive can be created by waiving part or all of the proposed license fee (see Recommendation No. 2 below) for registered complexes. Complexes which registered and then acted discriminatorily would be dropped from the register and subject to the penalties of the proposed licensing act and the regular procedures of the FEPC of HUD.



Obviously, in a tight rental market with few vacancies the service will not be as beneficial as it might be otherwise. However, in Santa Clara County, turnover is sufficiently high, especially at larger complexes, so that apartments would be available virtually always.

D. The Center would hold regular education programs for licensed real estate brokers and salesmen, and for developers, apartment managers and financial officers. The programs would be designed to familiarize the students with the fair housing laws and their rights and duties under them. Those who attend would be included in a directory of fair housing real estate officials.

As one aspect of this function, the Center would supply teachers for the real estate broker licensing qualification courses to discuss fair housing.

E. The Center would perform general auditing and education programs in all aspects of the sales and rental markets within the County. Naturally, close cooperation and coordination with private organizations and public agencies would be maintained.

It is important to note that while federal and private funding for the Center would be appropriate, it is important that the County itself declare its commitment to fair housing by including a substantial part of the Center's costs as a part of the regular County budget. The problems of fair housing are problems of the County and are the responsibility of the County, and solutions to the problems must be recognized to be an important and regular part of the County's functions, not dependent on the largesse or whim of either the federal government or private foundations.

Recommendation 2:

*We urge the County to establish an Apartment Complex Licensing Act and, if further investigation establishes the existence of a pattern of discrimination, a Mobile Home Park Licensing Act. The license fee charged must not exceed one dollar per year per unit and operation of this act must be self-supporting.*

Under Section 16,100 of the California Business and Profession Code:

"The boards of supervisors, in their respective counties, may in the exercise of their police powers, and for the purpose of regulation, as herein provided, and not otherwise, license any kind of business not prohibited by law, transacted and carried on within the limits of their respective jurisdictions, ..., and may fix the rate of license fee and provide for its collection by suit or otherwise."

Under this authorization, the County may enact a licensing provision to regulate the activities of apartment complex owners and managers.

An apartment complex would be defined as any rental housing offering four or more rental units at one location. An apartment manager would be defined as any person or company with responsibility for rental and tenant relations in an apartment complex.



The Licensing Act would be imposed in two sections--one on the owners of the complex and the other on the resident manager and/or managing firm. Thus, the owners of a complex would be required to license their complex and renew the license regularly. In addition, the management company, if one is used, and in all cases, the manager, would be required to be licensed to conduct the business of managing an apartment complex.

The license would be granted to all complexes and managers who have not been found to have violated the Licensing Act and the state and federal fair housing acts.

The violator of the Licensing Act or federal or state fair housing acts would be subject to several possible penalties:

1. A fine for the first violation of the Act;
2. A warning of loss of license and larger fine for a second violation within a three year period;
3. Suspension of the license for a set period (6 months or one year) for a third confirmed violation;
4. Revocation of the license for a period of five years for further offenses.

If the manager or management firm is found to have violated the Act, the manager will be liable for a fine, a warning and then a suspension. The effect will be that the manager will not be able to act as a manager of any apartment complex in the County for the period of the penalty.

If it is found that the owners have established the policy and violated the Act or the federal or state fair housing laws, the owner or owners or general partner will be barred from operating an apartment complex within the County for the appropriate period.

The procedures of the Act can be fairly simple. A County governmental housing agency should be established which would grant the license and investigate complaints of violations of the license. As one aspect of the investigation, the agency would regularly audit all licensees.

A Board of License Appeals would be established to act as hearing officers to hear the reports of violations and levy the penalties. (This could be the County Planning Commission). An appeal would be possible to the Board of Supervisors and then to the Superior Court.

The license fee charged must not exceed one dollar per year per unit and operation of this act must be self-supporting.

This licensing provision will clearly establish the fact that the County considers the achievement of fair housing to be one of its most important goals and that the County sees no need for the operation of businesses within the County that are detrimental to the public welfare. Just as it is the policy of the County to see that no unfit food is sold in the County and that no subdivision development is allowed which would be dangerous to future residents, it should be the policy of the County to see that no housing business is conducted which would discriminate against the minority groups which constitute an important part of the County's population and resources.

It must be recognized that the jurisdiction of the County does not extend to the areas which are within incorporated cities. However, under Section 16000 of the California Business and Professional Code:

"The legislative bodies of incorporated cities may, in the exercise of their police power, and for the purpose of regulation, as herein provided, and not otherwise, license any kind of business not prohibited by law transacted and carried on within the limits of their jurisdiction,..., and may fix the rates of such license fee and provide for its collection by suit or otherwise."

Thus, each city has the power to establish the proposed Licensing Act. For reasons of efficiency and ease of administration, it is recommended that the County urge the cities to enact the Licensing Act verbatim and that the proposed County governmental housing agency be designated as the enforcement agency for each city, with full powers to act within each city.

The Mobile Home Licensing Act basically would be identical except that it would specifically define "discriminatory acts" since mobile home parks are only covered by the Unruh Act and the Civil Rights Act of 1866. A mobile home park would be defined as any location which lets space or sells space for or maintains three or more mobile home units.

Recommendation 3:

*Enforcement of Rumford Act.*

First, the County should advocate the extension of the enforcement powers created under the Rumford Act. This could be accomplished by amending state law to require that the FEPC maintain an office in every county with a population of more than 200,000 persons, that its commissioners become full-time state employees and that its budget and staff be expanded dramatically to meet the existing needs. In the alternative, the County should establish a Human Relations Commission which would be empowered to perform the function of the staff of the FEPC. Assembly Bill 1098 presently before the legislature would accomplish this.

Second, the County should support the extension of the Rumford Act to duplex housing and, if warranted by further investigation, to mobile home parks.

Third, the County should encourage strict enforcement of penalties which can now be assessed for violation of the Rumford Act by the FEPC and for violations of the Unruh Act. In addition, large fines should be instituted when discrimination is found to have occurred, even if the owner subsequently offers the victim the same or a similar unit. The fines could be set at an amount equal to six month's or one year's rent or some proportion of the sales price or loan value involved. Part of the fine should be granted as damages to the victim of discrimination.

Consideration should be given also to the creation of criminal penalties for repeat violators of the Rumford Act.

Recommendation 4:

*We recognize the positive impact that some lending institutions have had on local housing and we urge the County to contact all lending institutions which do business within the County and urge them to establish positive programs to help minority families get loans, to eliminate the "red-lining" of mainly minority areas*

*and to generally open the financial resources of the County to minority developers and other minority actors in the housing market.*

Lending institutions should be encouraged also to locate branches in presently existing minority areas to provide financial services to the minority residents. These actions can be taken without endangering the financial integrity of the lending institutions and would help eliminate the present tendency of the lending institutions to reinforce with their policies the discrimination encountered by minority persons in other aspects of society.

Needless to say, the County should also contact the state and federal regulatory agencies to advocate that such agencies require or at least encourage lending institutions to establish such programs.

Recommendation 5:

*We urge the County to contact the Real Estate Commissioner and the County Real Estate Boards to advocate the revision of licensing qualifications and examinations for brokers and salesmen in order that all licensed brokers and salesmen be knowledgeable of the state and federal fair housing laws.*

At present the qualifying courses and examination barely mention fair housing. However, the Real Estate Commissioner could promulgate regulations that the course in real estate practice required to qualify for the broker or salesman license be revised to include materials concerning fair housing and that such materials be examined in the qualifying examination. This change would guarantee that in the future brokers and salesmen could not claim ignorance of the law and would be aware of the fact that some common practices are improper and illegal.

Recommendation 6:

*We urge the County and cities to continue their examinations of zoning and planning policies to determine means of allowing greater opportunity for minorities.*

Thus, minimum lot sizes, building, plumbing and electrical codes, etc., should be revised to eliminate unnecessary barriers to the development of factory-built and other less expensive forms of housing. As one aspect of this problem, mass transportation and other policies should be evaluated to determine whether they encourage or discourage the creation of low income housing and whether they tend to force such housing to locate in particular areas or encourage the spread of such housing throughout the County.

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## INTRODUCTION

The existence of housing discrimination in Santa Clara County cannot be doubted, though the exact dimensions are hard to gauge. As will be discussed in detail in this report, while discrimination on the basis of race and/or national origin may be encountered in all aspects of the housing market, it seems clear that discrimination is most prevalent in the apartment rental market.

This study is not intended to repeat the general recognition of the existence of housing discrimination, both nationally and locally in Santa Clara County, as expressed in such publications as *The Housing Situation: 1969, Social Concerns in Housing*, and other national, state and local studies.

Rather, the study is intended to analyze the institutions which constitute the Santa Clara County real estate sales and real estate rental markets. Thus, we interviewed real estate brokers, mortgage lenders, sales and apartment developers, property managers and persons active in private and public agencies dealing with fair housing within the county. Our goal has been to talk with the people directly involved in the housing market, especially those people who most directly influence the process of housing families and individuals in Santa Clara County. In addition to interviewing the persons described above, participants in the study have reviewed the legal background of the housing institutions involved in this study. Thus we have analyzed the fair housing laws which are relevant to the problems in Santa Clara County and have reviewed the legal background for the activities of real estate brokers, lenders, developers and apartment managers.

Our interviews included 26 successful interviews with real estate brokers, 11 successful interviews with financial institutions, 8 successful interviews with housing developers and 20 successful interviews with apartment managers.

It is important to recognize that the number of interviewees represent only a small portion of the persons active in the real estate field. Due to the extreme time pressures for completion of the study, and due to the refusal to cooperate by a large number of prospective interviewees, it is difficult to assert that the sample represents a statistically valid subset of the persons active in the field. As stated in *The Housing Situation: 1969*, page 73:

"The housing industry itself is well known for its fractionalized nature, . . . most firms in the building industry are quite small and the industry is a loose conglomeration of participants who come together on project-by-project basis; the largest house producing firm in the country handles less than one-third of one percent of the national housing output. The industry is highly volatile, as reflected by its extraordinary rate of business failures, second only to the retail trade."

We chose real estate brokers for our sample from a list of approximately 555 brokerage offices within the county, mortgage lenders from among approximately 209

bank branches (of approximately 55 different bank companies), as well as 48 branches of mortgage companies, and developers from among approximately 50 developers. All these sample groups were chosen at random from among lists supplied by the County of Santa Clara Planning Department.

Because of the number of apartment complexes within the County, and the activities of the Mid-Peninsula Citizens for Fair Housing in the northern part of the county, we limited our interviews with apartment managers to managers in complexes south of Sunnyvale. These managers were chosen by random selection within the area.

In addition to these actors in the housing market, we attempted to interview every public and most private agencies involved in fair housing problems within the County.

The questionnaires were detailed and thorough. They attempted to determine the size and range of activities of each of the groups interviewed. In addition, they attempted to elicit information concerning both the attitudes and actual practices of the actors. Finally, they attempted to ascertain the level of knowledge concerning fair housing laws, and to determine the knowledge of each participant concerning the activities of other persons within the survey. Copies of the questionnaires are on file with the County of Santa Clara Planning Department.

## FAIR HOUSING LAWS

In order to understand the problem of fair housing in Santa Clara County and the activities of the institutions which constitute the real estate sales and rental markets, it is essential to understand the laws dealing with fair housing. There are four major laws governing fair housing in Santa Clara County -- the California Rumford and Unruh Acts, the Federal 1866 Civil Rights Act and Title VIII of the Federal Civil Rights Act of 1968.

### 1. UNRUH CIVIL RIGHTS ACT:<sup>1</sup>

The Unruh Civil Rights Act, originally passed in 1959, declares that "All persons within the jurisdiction of this state are free and equal" and that they are entitled to be given full access to and equal treatment in "all business establishments of every kind whatsoever."<sup>2</sup>

The term "business establishments" has been given a broad interpretation, and can be assumed to include any activity which is intended or "hoped" to be a commercial success. Thus court decisions have held business establishments to include all multiple dwellings of three or more units,<sup>3</sup> tract developments,<sup>4</sup> real estate brokerage offices,<sup>5</sup> bank and mortgage lender offices,<sup>6</sup> and so on. For the purposes of fair housing, one can expect every real property transaction, except for a private sale by an individual who doesn't sell houses other than his own, to be included under the Unruh Act's provisions.

The Act does not define what it means by "discrimination". However, the term has been defined broadly in court cases. Discrimination has been held to include refusals to rent due to race or national origin,<sup>7</sup> exclusion of otherwise qualified applicants from membership on a local realty board solely on grounds of color, race, religion, ancestry or national origin,<sup>8</sup> unusual transactions to avoid sales to minority persons,<sup>9</sup> conspiracies between development companies and banks to impose special restrictions upon sales and financing,<sup>10</sup> and so on.

The Unruh Act provides for enforcement by making the violator of the law liable to the victim of the unlawful act for the victim's actual damages plus \$250.00.<sup>12</sup> Unfortunately, a costly and often slow court action is needed to recover for discriminatory practices. As a result of this fact, and provisions of the Rumford Act (see below), very few suits for damages have been litigated under the Unruh Act.

### 2. RUMFORD FAIR HOUSING ACT:

The more detailed California act specifically dealing with fair housing is the Rumford Fair Housing Act, originally passed in 1963.<sup>13</sup>

The Act declares:

"The practice of discrimination because of race, color, religion, national origin, or ancestry in housing accommodations is declared to be against public policy".<sup>14</sup>

Under the law, it is illegal for an owner to refuse to rent or sell, or otherwise to "discriminate against any person because of the race, color, religion, national origin or ancestry of such person in the terms, conditions or privileges"<sup>15</sup> relevant to housing or to inquire about the background of race, ancestry, etc. of a prospective tenant or buyer. This law applies to: (1) any owner of a housing unit for three or more families who has received public assistance, or (2) the owner of any single family dwelling occupied by the owner which has received public assistance, or (3) the owner of any dwelling of more than four units.<sup>16</sup>

Thus, all apartment complexes of five or more units, and all so-called publically assisted complexes of three or four units and all publically assisted single-family owner occupied houses are covered by the act.

A "publically assisted housing accommodation", (to use the language of the statute), is one which either (1) has been granted an exemption of some sort from state or local taxes, other than a veterans exemption, or (2) which is constructed on land sold below cost by the State or local government under the 1949 Federal Housing Act (Urban Renewal statute), or (3) is constructed on land acquired by the State or local government through condemnation for the purpose of construction of the dwelling, or (4) which has been acquired or constructed under a loan, the repayment of which is guaranteed or insured by the federal or state government.<sup>17</sup>

Thus, all land subject to the "Housing Property Tax Exemption", which includes virtually all single family houses owner-occupied in the state, except those eligible for a veterans exemption,<sup>18</sup> all property in urban renewal areas and all property financed under FHA or VA or similar programs is included in the coverage of the Rumford Act.

It is important to note that "the term 'owner' includes the lessee, sublessee, assignee, managing agent, real estate broker or salesman,"<sup>19</sup> or any person with an ownership or lease right, including the State itself. Thus, the Act covers the activities of rental agents, apartment managers, brokers and so on, and not simply the legal owner of the unit.<sup>20</sup>

In addition to owners as defined above, the Rumford Act makes it illegal (1) for any person covered by the Unruh Act to discriminate against any person in "transactions relating to sales, rentals, loans, or acquisition of housing accommodations" because of the person's race, color, religion, national origin or ancestry;<sup>21</sup> (2) for any lender, including banks and mortgage companies, to discriminate in setting terms, conditions or privileges relating to the obtaining or use of the financing;<sup>22</sup> (3) "for any person to aide, abet, incite, compel or coerce the doing of any of the acts or practices declared unlawful, or to attempt to do so."<sup>23</sup>

Enforcement of the Rumford Act is placed in the hands of the State Fair Employment Practices Commission (FEPC), which also is responsible for the enforcement of the Fair Employment Practice Act, which covers discrimination in jobs on the basis of race or sex.<sup>24</sup>

A complicated procedure has been established for the treatment of complaints by the FEPC. Any person aggrieved by an alleged violation of the Act must file a written complaint at an FEPC office (presently there are five offices -- full ones in San Francisco and Los Angeles, and one man offices in Sacramento, Fresno and San Diego)



within sixty days of the violation. As part of the filed complaint, the complainant must agree that he will waive his right to proceed under the Unruh Act to collect actual damages plus \$250.00. This waiver is an important cause of the relatively rare use of the damages provisions of the Unruh Act.

If the complaint alleges facts which, if proved, would constitute a violation of the act, one of the commissioners and a staff assistant is appointed to investigate. If the investigation shows that probable cause exists for believing the complaint to be true, the commissioner can request a confidential "conference, conciliation, and persuasion" aimed at procuring voluntary compliance with the law and elimination of the problem. If there is no cooperation and the commissioner believes that possible discrimination exists, he may serve a formal complaint requiring the owner to attend a hearing. After the hearing, if it is found that there has been an unlawful practice, the commission may require that the sale or rental of the accommodation be made to the aggrieved person, if the accommodation is still available, or that a like accommodation be made available, or that damages of up to \$500 be paid, if the same unit or a similar one cannot be made available.<sup>25</sup>

The owner has a right to appeal the commissioner's determination to Superior Court.<sup>26</sup>

One other important aspect of the statute must be considered. By Section 35743, the Rumford Act was made the exclusive state law banning discrimination, except for the Unruh Act, thus invalidating any and all local laws attempting to control or regulate housing discrimination.

The actual enforcement of the Rumford Act by the FEPC will be discussed in the section concerning the FEPC.

### 3. 1866 CIVIL RIGHTS ACT:

The 1866 Civil Rights Act, (§1982 of Title 42 of the U.S. Code) states:

"All citizens of the United States shall have the same right, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

In the case of *Jones v. Mayer*, 392 U.S. 409 (1968), the United States Supreme Court decided that this Act bars all racial discrimination, private as well as public, in the sale or rental of property.

However, it is important to note that the law

"is not a comprehensive open housing law...The statute...deals only with racial discrimination and does not address itself to discrimination on the grounds of religion or national origin. It does not deal...with discrimination in the provision of services or facilities in connection with the sale or rental of a dwelling. It does not prohibit advertising or other representation that indicate discriminatory preferences. It does not refer explicitly to

discrimination in financing arrangements or in the provision of brokerage services...it contains no provision expressly authorizing a federal court to order the payment of damages."<sup>27</sup>

The 1866 Civil Rights Act does, however, allow a complainant directly to sue in a federal district court, and to have a federal court enjoin the sale of the house or rental of the apartment to another (The FEPC can apply to a California court to do this also).<sup>28</sup> The Court may award damages and give other relief to a complainant. However, this statute has rarely been used to seek relief from housing discrimination.<sup>29</sup>

#### 4. TITLE VIII OF THE 1968 CIVIL RIGHTS ACT:<sup>30</sup>

Title VIII of the 1968 Civil Rights Act forbids discrimination in a wide range of housing units: (1) all federally assisted or operated dwellings, (2) sales of homes by subdivision developers, (3) all apartment house rentals, (4) all sales of units in cooperatives, (5) transactions in buildings of five or more units, (6) all transactions in buildings of two to four units if the owner does not live in the building, (7) all sales or rentals of one family houses if the owner owns more than three such homes, (8) all sales by an owner of three or fewer houses if he sells more than one house, other than his own residence, during any 24 month period, (9) all sales or rentals of single family houses sold or rented with the services of a real estate broker, agent, salesman or other person in the sales or rental business, and (10) all single family houses sold or rented even by the owner alone if discriminatory advertising is utilized.<sup>31</sup>

The law also regulates mortgage lenders, real estate boards and others in the business of selling or renting buildings.<sup>32</sup>

Thus, Title VIII covers virtually all housing, with the possible exception of sales or rentals in owner-occupied buildings containing four or fewer units, if no broker is used and no discriminatory advertising is used. However, these situations are covered by the 1866 Civil Rights Act if discrimination is based on race.

Title VIII forbids a wide range of activities, including: (1) refusing to sell or rent to or deal with any person, (2) discriminating in terms of conditions offered, (3) using discriminatory advertising, (4) denying access for inspection when the housing is on the market, (5) blockbusting, (6) offering less desirable financing, (7) denying use or participation in such real estate services as multiple listings, etc. In each situation it must be shown that the acts are motivated by considerations of race, color, religion or national origin.<sup>33</sup>

In addition, any attempt to coerce, intimidate or interfere with a person attempting to exercise his rights under the law is illegal. Criminal penalties are provided if force or the threat of force is used to interfere.<sup>34</sup>

The administration of the Title VIII is in many ways similar to the administration of the Rumford Act.<sup>35</sup> A complaint must be sent to the U.S. Department of Housing and Urban Development (HUD) within 180 days of the alleged discriminatory act. HUD will investigate and attempt to resolve any problem with persuasion and conciliation. However, any complaint from a state or local area with a statute which

provides "substantially equivalent" rights and remedies will be referred to the appropriate state or local agency.<sup>36</sup> Only if at least 30 days has passed without any action will the federal statute be invoked.<sup>37</sup> The Rumford Act has been defined as "substantially equivalent" and so HUD refers complaints to the FEPC. However, many cases are returned to HUD after referral to the FEPC.<sup>38</sup> Thus, in many situations, the Rumford Act provides the primary remedies to the victims of discrimination, but Title VIII is also available if the FEPC fails to act.

In addition to this administrative remedy, an individual who meets discrimination covered by Title VIII may bring a suit directly against the alleged discriminator. If there is a substantially similar procedure for suit created under state law, however, the suit must be brought in state court. Under the federal statute, actual damages plus a maximum of \$1000 punitive damages may be assessed, as well as injunctions and other appropriate relief.<sup>39</sup>

Again, it seems likely that a person wishing to sue directly would be expected to sue under the Unruh Act procedures, at least where discrimination occurs from a business organization.

Finally, HUD or the individual discriminated against may bring the situation to the attention of the U.S. Attorney General, who may bring a suit in federal court if he determines that a person or group of persons is engaged in "a pattern or practice of resistance to the full enforcement of any of the rights" created by Title VIII, or that any group is being denied its rights, where the denial of rights "raises an issue of general public importance."<sup>40</sup>

Thus, the institutions we are most concerned with -- the brokers and salesmen, the mortgage lenders, the sales and rental developers and the apartment managers -- all are clearly covered by and regulated by both state and federal fair housing laws. But, we must explore the actual activities of the housing institutions and the enforcement agencies to determine whether the existence of the laws has ended housing discrimination in the County. Unfortunately, our answer must be that discrimination has not disappeared as a result of these laws.



## REAL ESTATE BROKERS AND SALESMEN<sup>1</sup>

There are six local real estate boards in Santa Clara County - San Jose (the largest), Los Gatos-Saratoga, Sunnyvale, Mountain View, Palo Alto and Los Altos. Virtually all practicing brokers are members of at least one of these boards. Membership in these local boards carries with it membership in the state and national associations named below.

Twenty-six brokers were interviewed at agencies employing from 1 to 66 people and selling 5 to 450 houses per year over the entire spectrum of prices. Several other brokers refused to cooperate with the study.

Real estate brokers and salesmen are licensed by the State of California, and subject to a detailed set of statutes and regulations based on that licensing.<sup>2</sup> In addition, the brokers who join Boards of Realtors, and who have the right to use the term "Realtor", are subject to Codes of Ethics and rules and regulations of their local Boards, the California Real Estate Association and the National Association of Real Estate Boards.

A real estate broker is any person

"who, for a compensation or in the expectation of a compensation, does or negotiates to do one or more of the following acts for another or others:

- A) Sells, or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity;"<sup>3</sup>

or who assists others in leasing or financing real property.

A salesman is any employee of a broker employed to perform the acts a broker is allowed to perform.

To qualify as a broker, one must meet certain educational requirements and pass an examination concerning one's knowledge of real estate law and practice.<sup>4</sup> Apparently, almost no mention is made of fair housing laws during the broker qualification courses, and knowledge concerning the laws and their scope and application is unlikely to be required to pass the examination.

However, several statutory and regulatory provisions do limit broker activity in their treatment of minority groups, in addition to the fair housing laws. For example, California Business and Professions Code §10177(m) states that inducing sales wholly or in part on the ground of loss of value, decline in school quality or increase in crime due to the present or prospective entry of persons of a different race, color, creed or national origin is grounds for suspension or revocation of a real estate license. This provision resembles, but is not as broad as, the "blockbusting" which is forbidden by the Rumford Act and Title VIII of the 1968 Civil Rights Act.

Secondly, a realtor must abide by the by-laws of his local Board of Realtors. Violation of the by-laws is grounds for suspension from the Board of Realtors. The by-laws of the Boards in Santa Clara County incorporate the National Code of Ethics,



Section 12 of which states that realtors should endeavor always to be informed regarding laws, proposed legislation, governmental orders and other essential information and public policies which affect the interests of clients. Since fair housing laws exist and fair housing is the official policy of the State of California, it would appear that realtors must be basically familiar with anti-discriminatory legislation, or risk suspension. However, the study shows that the realtors are not familiar with the details of the Unruh, Rumford and Civil Rights acts beyond the basic notion that they are not supposed to discriminate.

Thirdly, most local real estate boards have "adopted" the California Real Estate Board "Code of Practices" which states that it is the responsibility of a realtor to offer equal service to all clients, show property to all, receive and communicate all offers and try to conclude the transaction. Disciplinary action will be taken if a realtor attempts to solicit the sale by implanting fears based on the actual or anticipated introduction of a minority group into an area and also for conduct inhibiting client relationships with persons of any race, creed or ethnic group. The Code of Practices also states realtors have no right or duty to determine the racial, creedal, or ethnic composition of any neighborhood or part thereof.

Unfortunately, the National Code of Ethics fudges these clear statements of duty. Article 5 of the National Code of Ethics states that:

"The realtor should not be instrumental in introducing into a neighborhood a character of property or use which will clearly be detrimental to property values in that neighborhood."

One-third of realtors interviewed felt a minority person would decrease property values in an area and another third felt that sometimes a minority person would do so. Thus, it is possible that adherence to Article 5 will cause brokers to ignore the duties apparently created elsewhere in the Codes. The National Real Estate Board has attempted to avoid this dilemma by officially stating that "character or use of property" does NOT include occupancy. However, earlier versions of the section specifically referred to race and nationality, and defined integration as a form of misconduct.<sup>5</sup>

Unfortunately, there appears to be a legacy of discriminatory practices in the activities of realtors as a result of the earlier versions of the Code. The discrimination was based on the assumption that majority and minority groups should not share the same residence areas, and on the assumption that even one minority person in an all white area would cause whites to leave the area. The realtors saw themselves as protectors of the neighborhood and its property values, needing to be ever vigilant to protect the white areas and their own status and opportunities to work within those areas. The present wording of Article 5 does not appear to effectively eradicate this basic notion, as evidenced by the interviews and comments by realtors who refused to be interviewed. (One of the latter stated that his office is made up of "Southern boys" so "they" never bother that particular office.)

In addition, Article 11 of the Code of Ethics states that the primary obligation of the realtor is to show absolute fidelity to his clients' interest, although such fidelity is

not meant to relieve the obligation of dealing fairly with all parties to the transaction. It is difficult for a broker to balance this conflict. First, it is not clear to the realtor who is his client. Ordinarily, the seller is the client since he has signed a contract to pay a commission upon the sale of the house. But the buyer is also a client since the purchaser must be ready, willing and able to buy before the broker earns his commission. Neighbors of the seller are potential future clients the broker does not wish to alienate. The interviews show that 48% of the realtors considered themselves basically middlemen rather than clearly working for one side in the transaction, while 20% said they represented the seller, 20% said if it was their listing, they represented the seller and if it was another realtor's listing they represented the buyer, and 8% said they represented the buyer.

As a result, these sections of the Code of Ethics would seem to be unsuccessful in clearly indicating to realtors their role and the limits and duties placed on the role by the fair housing laws and the state and federal policies of open housing and no discrimination.

Further evidence of this failure is evidenced by the fact that while the majority of complaints to both HUD and the FEPC concern rentals, a substantial number do concern sales of housing and the activities of brokers.<sup>6</sup> One of the bank officers interviewed for the study revealed that he had been "steered" by a realtor to certain neighborhoods and away from others when house hunting in Santa Clara County, a violation of the fair housing laws.

Thus, it seems clear that further amendments are needed in the local by-laws and National Code of Ethics to clearly reflect the present state of fair housing laws and to clearly state that the legacy of discrimination by brokers must end.

It is encouraging to note that most of the brokers did say they would refuse to honor a request by a seller to discriminate, although some brokers felt they would honor the request and all apparently are authorized to do so by at least part of the Code of Ethics.

As an interesting sidelight, when asked which article of the Code of Ethics most affected their business, 40% answered the "Golden Rule" and 60% the whole Code. When asked if there were sections of the Code that dealt with discrimination, 72% of the realtors answered yes, although actually there are NO articles specifically dealing with discrimination in the Code of Ethics.

The result of the conflicts in the laws and Codes is that a realtor knows he should not discriminate but beyond that knows little of the specifics and is confused. We strongly recommend that the licensing courses be revised to include detailed discussion of the fair housing laws and their effect on the way a realtor should do business. Furthermore, local real estate boards should specifically incorporate a clear, concise statement in their by-laws forbidding any form of discriminatory business practices and making such practices subject to disciplinary action. At present, some local boards, (e.g. Sunnyvale) simply state they subscribe to the Code of Practices while others incorporate it verbatim into their by-laws (e.g. Palo Alto). Unfortunately, the confusion and contradiction apparently have allowed at least some realtors to act as if the rule is that subtle discrimination is proper.

As a result, despite legislation, codes and by-laws, there remains the question of the daily working practices of brokers and salesmen. The study showed that virtually all brokers felt they should make known to all clients that the multiple listing service is available. However, of necessity, the broker must make a quick evaluation of a potential buyer and can only show the buyer a handful of houses. Many subjective elements must effect this evaluation, including subconscious or barely perceived bias. Ninety percent of the brokers stated income was a basic evaluation criteria. Other common criteria were personal appearance and morality. It is impossible to say how many brokers react to blacks or Chicanos by underestimating income, assuming lower morals, disliking personal appearance, etc. From the reports of HUD and the FEPC, it would seem clear that at least some unconscious discrimination almost invariably occurs when a minority person enters a brokerage office searching for a home. The level may be such that it has no effect on the treatment of the minority buyer. Unfortunately, however, a sufficient number of instances of discrimination appear to occur to show that the problem has not been totally eliminated in Santa Clara County, although the level is clearly below that found in the rental market.

As a final caveat, it is important to recognize that the brokers who discriminate are often reflecting the prejudices of the majority community, and are only an aspect of the greater social problem. For example, one minority person interviewed in the study was not allowed to buy his white friend's house, because the friend didn't think his about-to-be former neighbors were ready for a black neighbor.

Thus, to some extent the broker may blame the sellers and society for his activities. However, since the broker is an indispensable part of the real estate market, his reflection of individual action and prejudices will magnify and intensify the problems involved. For this reason, the local Boards of Realtors must aggressively and carefully act to educate their members and eliminate discrimination by them. The County must act to help and cooperate with the Boards in this endeavor.



## REAL ESTATE LENDERS<sup>1</sup>

Ten banks and one mortgage company were successfully interviewed, with several others refusing to cooperate. Among the banks, eight were commercial banks and two savings and loan associations. Bank assets varied from approximately \$200 million to over \$29 billion. All banks interviewed had more than one branch within Santa Clara County.

There exists an extremely complex and detailed federal and state scheme of control for financial institutions. The financial activities and condition of the financial institutions, including the percentage of loans of various types, the maximum loans allowable to any individual, the types and activities of branches, etc., are all carefully prescribed and regulated. However, there does not appear to be any attempt to control or limit the racial policies of the banks regarding loans except through the Unruh and Rumford Acts.

The banks generally look to income stability, a good credit listing and the apparent capacity of the borrower to bear the cost of the loan in determining loan approval. Various ratios of income to monthly payments are used, usually varying around a ratio of 4 to 1 (income to payments).

Thus, the economic standing of the potential borrower is the most important factor for the banks. In a sense, they are guilty of discrimination insofar as the general pattern of discrimination in society results in a lower economic standing of minority groups. In addition, most of the lending institutions reported they do not consider the income of a wife of child bearing age when determining the economic strength of a potential borrower. Although this criterion applies to all borrowers, it may be especially critical for minority families attempting to become homeowners for the first time, since in many minority families both spouses are working, and the effect of the standard is to understate minority family income.

In addition, most of the banks have established minimum sales prices, minimum sizes and/or maximum ages for houses they will finance. Minima were set as high as \$30,000 or \$35,000, though some were as low as \$7,500. One bank charges a higher interest rate on low cost houses. The conjunction of these standards may have the effect of eliminating minority borrowers and may effectively eliminate loans in the less affluent sections of the county. Indeed two banks mentioned East San Jose and East Palo Alto as locations undesirable for mortgage property, and others mentioned that they take into account the location of the home to be financed, frequently due to concern for "current value" or the "market trend". If other groups prevent the minority purchaser from leaving the predominately minority areas, this policy could reinforce such acts and severely limit the access to financing of minority persons.

Two of the banks interviewed further raised the possibility of some discrimination by agreeing with the statement "that if a minority group member moves to an all-white area, property values will fall."

If bank officers express such an attitude, and they are the operating loan officers, the effect of the attitude may be to deny financing, and hence access to housing, to at least some minority group members.

Generally, however, most of the interviewees expressed at least some interest in and desire to help facilitate the financing of homes for minority persons. At least one



bank claims that it is actively involved in encouraging low income housing and minority housing, and most banks have participated in FHA, VA and federal low income housing development loans.

## SALES DEVELOPERS<sup>1</sup>

Six sales developers were interviewed concerning their practices and attitudes. Several others were contacted but refused to cooperate. The interviewees varied in the number of homes constructed yearly from about ten to over 1500. Sales prices varied from under \$20,000 to over \$70,000.

The statutory and regulatory framework for the operations of developers marketing residential property is directed at controlling subdivision development, protecting the public from fraud in the sale of property, protecting against violation of warranties, etc. Other than the fair housing laws, there seems to be no direct control over the personal relations and treatment of the prospective purchaser by the developer.

There is little evidence from the interviews to establish a pattern of overt discrimination based on race, national origin, ancestry, etc. However, only one builder surveyed employed any minority salesmen of a total of approximately 55-60 salesmen among the developers. This builder employed two minority salesmen. Both were Mexican-Americans. Only one other salesman was designated as Spanish speaking. Five of the developers said that their developments had anywhere from 15% to 30% minority ownership, while the sixth's development had neither blacks nor Mexican-Americans.

Several builders recognized that their choice of area in which to build had an effect on likely minority representation. They complained that government regulations, such as zoning, building codes, etc., had the effect of raising their costs, thereby eliminating large numbers of persons from purchasing.

The developers expressed the opinion that there is a strong demand for housing designed to sell for under \$20,000, and half thought it could be profitable to meet the demand. Three, however, felt it would not be profitable because of land costs. The developers assumed under \$20,000 housing would be integrated housing, and five said this would probably cause problems with getting white buyers.

One developer expressed overtly discriminatory sentiments. He felt that blacks and Mexican-Americans would tend to cause an area to run down. He feared that he would lose profits if integration occurred in his projects and felt that his own neighborhood would be in danger of degradation due to the bad habits of such minority people if any moved in. As one aspect of his operations, he admitted that he would make a more detailed credit check of a minority prospective purchaser than a majority white person. He knew nothing of either state or federal fair housing laws, except that he had heard that racially restrictive covenants were not allowed.

This lack of knowledge or familiarity with the fair housing laws was claimed by several of the developers. It is hard to tell if this was genuine ignorance of the law, or simply a way to avoid detailed questioning concerning the laws and their effects on practices.

In addition, the developers appeared to be totally unfamiliar with the various private fair housing groups and barely familiar with government agencies entrusted with fair housing enforcement. This unfamiliarity may be caused by the lack of any highly publicized or aggressively active public or private group in much of the county.

The developers did admit to having heard of discriminatory practices performed by others, mostly apartment managers and mobile home park operators.

Evidence of discrimination by developers was unearthed independently during the survey. Several real estate brokers and private and public agencies claimed knowledge of discriminatory practices by developers.

In one instance, a community leader detailed a wide-spread form of discrimination he had encountered. Among a group of developments, only one had applied to participate in the federally financed Section 235 program, which offers reduced interest rates for the purchase of homes. Minority purchasers were all "steered" to this development, and were prevented from buying in other developments by the refusal of the developers to participate in the program and by general "steering" practices. Some of the developers had allowed a token minority representation, but now barred other prospective minority purchasers.

In addition, the quality of housing and maintenance was alleged to be lower in the development which offers the federally assisted financing. As a result the minority purchaser had only an opportunity to purchase an inferior product at an inflated cost under the subsidized program.

On the whole, however, the general consensus of participants in the real estate market seemed to be that developer discrimination is not nearly the problem that apartment rental discrimination is. Most of the problem with sales housing in Santa Clara County is that land and construction costs, government regulation and the cost of financing have raised the cost of housing to a level at which most minority group persons cannot afford to purchase. If a minority person has a sufficient income, he is less likely to be denied the opportunity to purchase a house in a tract than to rent or to buy from a private seller.

## APARTMENT COMPLEX MANAGERS<sup>1</sup>

Twenty apartment complex managers were interviewed. Many other managers were contacted but refused to cooperate. The complexes ranged in size from four to 157 units and rents varied from \$105.00 per month to \$305.00 per month. Minority representation at the complexes varied from zero (at six complexes) to 27%. Two of the managers were owners of the complex they managed.

Before analyzing the data from these interviews, it is important to note that there were significant inconsistencies in the answers given by apartment managers. There was also a high rate of comments by the interviewers stating they personally felt many false answers were given. There also was frequent hostility expressed by managers to the questions asked and on a number of occasions, the interviewers were asked to leave before completion of the interview, although they did manage to complete many interviews.

Title VIII of the 1968 Civil Rights Act, the 1866 Civil Rights Act, and the Rumford and Unruh Acts apply to rental units as well as the sale of homes. However, there is no legislation or network of regulatory control for apartment house managers as there is for lenders and brokers.

No apartment manager admitted ever having acted in a discriminatory manner. Four managers did state that they knew of other apartment managers who discriminated, however, and two managers checked race as one of the criteria they used in evaluating potential tenants and one checked ethnic background. The two who checked race had no minority tenants in their complexes.

Many of the managers expressed overtly discriminatory feelings. Five managers, in addition to the three mentioned above, believed minority tenants would damage rental value and cause higher vacancies. One stated he had such an experience in his own complex. Another manager stated "they won't take care of property". This manager had no minority tenants and claimed they decreased rental value.

Income, personal appearance and morality were the most frequently mentioned criteria for selecting new tenants. Most of the managers stated that the owner had established a minimum rent-to-income ratio for tenants. However, the selection process frequently appears to be an entirely subjective decision by the manager, often made prior to any income inquiry. For example, over 40% of the managers (including several with no minority tenants), agreed with the statement that owners or managers who refuse to sell or rent to qualified individuals because of race, religion or national origin are within their rights.

One apartment manager stated that at his previous job the owner of the complex had told him not to rent to blacks, regardless of income. (The complex he is now managing has substantial minority representation. He told the interviewer -- "I even rent to Jews".)

The managers frequently felt that their screening was necessary because other tenants would not like to have a black move in. One of them said: "We have quite a few southerners in this complex". Another manager felt that the tenants would not like any non-white minority tenants. These managers had no minority tenants.

Ironically, 40% of the managers also felt that minority housing problems in Santa Clara County have been over-emphasized, and 75% felt that it is not hard for minorities to rent apartments in Santa Clara County.



It is apparent from the interviews that many apartment managers harbor prejudiced feelings towards minorities. They appear free to indulge in their prejudices because their evaluation of potential tenants is virtually totally subjective, with little or no supervision from owners. The managers utilize subtle devices to achieve their discriminatory purposes. Indeed, it seems fair to say that there is more overt discrimination performed by apartment house managers than in any other segment of the housing industry in Santa Clara County.

In addition to the evidence gathered in this study, Mid-Peninsula Citizens for Fair Housing (MCFH), a private organization concerned with discrimination in housing, has conducted audits of apartment manager discrimination in Mountain View, Sunnyvale, Cupertino and Palo Alto. So far, MCFH has audited 73 apartments with 4100 units in Mountain View, and 77 apartments with 5455 units in Sunnyvale. There was conclusive evidence of discrimination in 31 complexes (1600 units) in Mountain View representing 40% of the units, and in 42 complexes (2756 units) in Sunnyvale representing 50.5% of the units. Methods of discrimination included such acts as total exclusion of minorities (no apartment available to blacks when there were to whites - the most frequent method), more stringent lease terms, higher security deposits, higher rent, credit checks only for blacks, later dates for available occupancy, managers never answering the door for blacks and extremely dirty units shown to blacks.<sup>2</sup> (See discussion of MCFH below.)

Further, both the Fair Employment Practices Commission and Department of Housing and Urban Development report that over 70% of the complaints they receive concern rental discrimination.

Finally, the National Committee Against Discrimination in Housing reports that consultant John Denton concluded:

"...the vast majority of apartment complexes discriminate, and almost all believe that their white tenants will leave if they rent any of their apartments to minority families."

"...Where housing is as tight as it is in the Bay Area, discrimination becomes very difficult to prove and easy to practice. If a minority prospect can be held off for as little as four hours, it is usually possible to get a bona fide white tenant signed up in that time."

"...Time is bought in all kinds of ways by setting requirements almost no one can meet; by forms; by demanding references; by myriad uncertainties; even by failing to call back when an initial phone inquiry suggests that the prospect may be of a minority ethnic group."

“...Apartment owners’ association have grown in strength as many smaller owners have joined these groups in the hope of finding new strength and new techniques for the struggle against residential integration.”<sup>3</sup>

Thus, this group of actors in the housing market must be the main target of any programs or actions to eliminate housing discrimination with the County. Consideration must be given to some radical changes in the law and in enforcement to reach this serious and continuing problem.

## PUBLIC AGENCIES

Next, we must consider the other actors within the housing market, the public and private agencies that are actively involved in attempting to enforce or promote compliance with the fair housing laws:

### 1. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT<sup>1</sup>

As outlined earlier, the Department of Housing and Urban Development is responsible for enforcement of the federal fair housing laws. Under Title VIII of the 1968 Civil Rights Act, the Secretary of the Department of Housing and Urban Development, or his designee, is required to (1) establish and administer the enforcement machinery set forth under the Act, (2) make and publish studies of housing discrimination in representative urban, suburban and rural communities, and (3) give aid to and cooperate with federal, state, local and private groups interested in fair housing compliance.<sup>2</sup>

There are separate regional and area HUD offices in San Francisco. The regional office since October 1, 1970 has been responsible for all HUD activities under the fair housing laws in the states of Arizona, California, Hawaii and Nevada, and the territories of Guam and American Samoa.<sup>3</sup> The area office is responsible for the enforcement of fair housing laws in Santa Clara County, along with much of northern California.

An average of approximately 30 complaints per month are received by HUD throughout California, with a total of 342 complaints from California being received between July 1, 1970 and July 31, 1971. Of the complaints received in California, HUD referred 282 or 82% to the FEPC<sup>4</sup> for action. Of the referred cases, only 50 or 17.7% were docketed by the FEPC and 232 or 82.3% were returned to HUD for action. Further, only 13 of the cases docketed by the FEPC, or only 4.6% of the cases referred to the FEPC, were closed by HUD as satisfactorily completed.

Of the complaints received by HUD in the entire region, 326 were received between July 1, 1970 and June 30, 1971. Approximately 95% of these complaints were from California. 133, or 40.8%, of the complaints in the region are still in some phase of investigation. 107, or 32.8%, have been closed without disposition, either due to a referral to the FEPC which the FEPC acted upon, or a lack of jurisdiction, or an inability to locate the complainant, etc. 78, or 23.9%, have reached the point where a conciliation conference either has been held or is about to be held (No statistics are yet available concerning the results of any conciliation conferences). Five complaints have had no determination and three complaints have been referred by the regional office to HUD headquarters in Washington, D.C. for possible referral to the Justice Department for action.

Thus, of 326 complaints in the region between July 1, 1970 and June 30, 1971, 214, or 65.7%, are still actively being pursued, but virtually none have been completed in favor of a complainant.

Ten investigators and conciliators performed all of the work on the complaints received, investigating them, holding the conciliation procedures, etc.



Of the complaints received by HUD, most concern low and moderate income housing units, with 70% concerning rental problems. This statistic is predictable since the major group of minority persons have incomes in the range which would require them to seek low or moderate priced housing. Since complaints are filed for high income housing as well, it seems clear that at least some discrimination may be encountered by a minority person at all levels of the housing spectrum.

Needless to say, HUD receives complaints from black, Mexican-American, oriental and other minority groups. In addition, complaints have been received from majority white persons (for evictions or rent increases for tenants with minority friends, etc.).

Since HUD must quickly investigate and respond to complaints to effectively enforce Title VIII and guarantee the rights of the victims of discrimination, these statistics show a gap between the provisions of the law and their enforcement, as shown by the fact that three months after the end of the fiscal year only a very few complaints have been finally settled. This delay cannot but diminish the likelihood that the provisions of Title VIII limit significantly the discriminatory procedures and policies of the actors in the private housing market.

In addition, the number of complaints received by HUD per year is approximately the same as the number of complaints received by the FEPC (see the next section). This is a minute number of complaints, compared to the amount of discrimination our interviewers and groups such as Mid-Peninsula Citizens for Fair Housing have documented exists in Santa Clara County.

In addition to enforcement procedures, HUD is active in advertising and education programs to inform the public and the housing industry of the law and the rights and duties created thereby. HUD has prepared several publications which it distributes widely.<sup>5</sup> However, at least one real estate broker complained that the HUD pamphlets are more confusing than helpful. More significantly, at present there are no Spanish-language versions of the pamphlets, although HUD is apparently preparing some now. Thus, a major minority group in California and Santa Clara County does not have access to the HUD materials in a readable form.

Basically, despite the number of complaints filed with HUD in California, and despite HUD's educational programs, HUD does not seem to be familiar as a fair housing enforcer in Santa Clara County. HUD was not named in a single questionnaire as an active enforcement agency, despite the fact that the questionnaires dealt with the supposedly sophisticated sector of the housing market. The fact that there is no permanent office in the County to deal with county problems is probably responsible for this situation, along with the necessity of initially transferring all complaints to the FEPC.

Thus, for purposes of fair housing in Santa Clara County, HUD must be viewed as an alternative to the FEPC for enforcement, as well as a source of educational materials and publicity. But HUD, like the FEPC, cannot be viewed as a highly effective enforcement agency which the actors in the housing markets continually consider in determining their policies and actions.



## 2. FAIR EMPLOYMENT PRACTICES COMMISSION<sup>6</sup>

The Fair Employment Practices Commission (FEPC) is the state agency empowered to administer the fair housing laws. Unfortunately, its primary responsibility is to enforce fair employment practices, including sex discrimination as well as racial discrimination. To carry out its several functions, the FEPC has major offices in San Francisco and Los Angeles, and small offices in Sacramento, Fresno and San Diego.

The Commission itself is a seven man body appointed by the Governor to act as hearing officers and set policies for fair employment and fair housing.<sup>7</sup> The seven commissioners all work part-time with the FEPC. Two of the commissioners are residents of Northern California - one living in Oakland, where he is president of the International Brotherhood of Railroad Workers, and the other in Campbell, where he is a high school principal. In addition, a third commissioner, who is a resident of Santa Barbara, travels to San Francisco to hear cases every other month.

As outlined earlier, the FEPC commissioners hold confidential "conference, conciliation and persuasion" hearings at which they attempt to procure voluntary compliance with the law and the elimination of problems caused by discrimination. If the voluntary activity fails to achieve its purpose, the commissioner may require a hearing before the full Commission. The Commission may make findings concerning the practice of the accused owner, realtor, apartment manager, etc., and order the sale or rental of the unit involved or a comparable one, or may require payment of damages up to \$500.00 to the victim of the discriminatory acts.<sup>8</sup>

Thus, the activity and the ability of the commissioners is crucial for the effectiveness of the enforcement procedures of the fair housing laws.

It would not be appropriate or possible to judge the activities of the present commissioners. However, some comments on the scheme as a whole, and on certain aspects of present policy, are possible.

First, the use of part-time volunteer commissioners is justified on the basis that active, recognized community leaders are able to act as commissioners since one day a month or so is a time commitment even an extremely active person can offer. The use of recognized leaders enable the commission to achieve voluntary compliance with the laws that otherwise may not be obtained.

However, the part-time commissioners also cannot take nearly as active a role in the investigatory and conciliatory process by the very fact of their part-time status. Given the larger volume of complaints which could go to the FEPC if it became an active agency (to be discussed later), the present nature of the commissioners would seem to retard the effectiveness of the agency. Surely, if fair housing and fair employment practices are genuinely important aspects of the state policy, it would be possible to attract recognized, respected community leaders to become full time commissioners.

The effect of the change would have important implications for the staff. At present, the active FEPC staff is 52 persons, including one general counsel and nine consultants for Northern California (the consultants are full time employees who do the basic investigatory and information gathering work). Of these, the general counsel and seven of the consultants are located in the San Francisco office. One consultant is located in Sacramento and one in Fresno.

Once the consultants have investigated a complaint and decided it shouldn't be rejected for lack of jurisdiction or lack of merit, the consultant must prepare the case to be conciliated by the commissioner.

Unfortunately, the consultants presently are not specialized either by geographic area or by complaint subject, although in the past there was a consultant who specialized in the problems of Santa Clara County. As a result, any consultant may be found traveling anywhere in Northern California on a labor or housing problem.

Due to the small number of consultants, the FEPC does not encourage the filing of complaints. Ordinarily, the complainant must either call or write to or travel to the San Francisco office to file a complaint. The time and expense involved, since attempts at conciliation or hearings also are likely to be in San Francisco, is great and likely discourages many complaints from even being filed.

As a result, from the start of its role as fair housing enforcer, in September of 1963, to the end of March, 1971, the FEPC has docketed a total of 1898 housing cases, 829 of which were received in the San Francisco office, an average of 21 complaints per month statewide and only nine complaints per month in the San Francisco area of jurisdiction. No separate statistics are available for Santa Clara County. During March, 1971, the latest month for which statistics are available, 14 complaints were received in San Francisco and 31 statewide. Of the total complaints, 1690 (89%) statewide and 689 (83%) in San Francisco have been closed. Of those, 534 (28%) statewide and 200 (24%) in San Francisco were dismissed for insufficient evidence or no evidence of discrimination, and a total of 267 (14%) statewide and 78 (9%) in San Francisco were found to be outside the jurisdiction of the FEPC or the complaint was withdrawn. Corrective action was effected in 866 cases (46%) statewide, 399 (48%) in San Francisco. Public hearings were held in only 24 cases (1.3%) statewide and 12 cases (1.4%) in San Francisco. The additional 208 (11%) cases are pending statewide, 140 (17%) of them being in San Francisco.<sup>9</sup>

Thus, 42% of cases statewide and 33% of the cases in San Francisco are dismissed for lack of merit of some sort, or were withdrawn. Just under half of the cases since 1963 have been completed with corrective action.

Of course, in addition, many cases are referred to the FEPC by HUD and then are returned to HUD without FEPC action. These cases are not reflected in the statistics.

Further, these statistics by no means tell the complete story. Since 1963, only 78 complaints have been received from Spanish-surname individuals from the entire state of California, and only 25 have been received in the San Francisco office! Thus, although the FEPC has published materials in Spanish it clearly is not even slightly effective or relevant for the Mexican-American community, either in Santa Clara County or the state as a whole.

In addition, the total number of complaints received over a period of 7½ years is pathetic, when compared to the finding of the Mid-Peninsula Citizens for Fair Housing of discrimination in 40% of the apartments in Mountain View and 50% in Sunnyvale. It would seem fair to say from this study that a greater number of fair housing violations occur yearly in Santa Clara County than have been reported statewide to the FEPC since 1963.



This criticism is recognized by the consultants themselves. One consultant expressed the feeling that in fair housing, the FEPC has little or no effect on offenders because of the lack of complaints and because of extremely weak enforcement powers. He was aware of only one instance in which a court suit had been instigated to enforce a finding of damages by the FEPC, and of few instances in which the FEPC had enjoined the sale or rental of a unit involved in discrimination. He was aware of overt discriminatory patterns in apartment rentals, involving denials of apartments to minority persons and punishment of majority whites with minority friends. Yet, due to an over-whelming caseload when job discrimination complaints and HUD referrals are included, and the fear of advertising to increase the caseload, the FEPC can do little about the problems.

In addition, the various real estate boards, both local and statewide, and apartment managers associations, frequently have acted to defeat budget increase requests and have shown their members how to avoid or skirt the fair housing laws.<sup>10</sup>

In an attempt to increase the effectiveness of the FEPC, the Commission has requested an additional 24 staff members, but has been refused permission to expand for several years. Its budget of \$928,234.00 has remained the same for the last two years.

In addition to the enforcement procedures, the FEPC has educational and information programs. It publishes a group of pamphlets and posters concerning the fair housing laws, including some in Spanish.<sup>11</sup> It offers information to the real estate broker qualifications courses. However, due to the small size and budget, it is not and cannot be aggressive and active in its education activities, apparently for fear of meeting a flood of complaints it cannot handle.

Another aspect of the Commission is worth mentioning. Introduced in the Legislature in 1971 was a bill to authorize the FEPC to cooperate with local human relations commissions concerning fair housing.<sup>12</sup> However, the commissioners opposed the bill, claiming that the bill would cause a duplication of effort and would make fair housing enforcement too responsive to local process and politics. While this position would be sensible for an active, effective agency, one is forced to doubt the reasonableness of the position taken, given the history of the FEPC.

### 3. HUMAN RELATIONS COMMISSIONS

By state law, the county board of supervisors or any city council may create a human relations commission.<sup>13</sup> Such a commission's composition and size is to be determined by the local legislative body. Its functions, however, are set by state law. A human relations commission has the responsibility "to foster mutual respect and understanding among all racial, religious and nationality groups in the community",<sup>14</sup> to make studies concerning human relations in the community,<sup>15</sup> to investigate the causes of tension and conflict among groups,<sup>16</sup> to attempt to lessen racial problems by "conciliation, conference and persuasion"<sup>17</sup> and to conduct and recommend educational programs to encourage cooperation and eliminate discord among groups.<sup>18</sup>

However, the commission has no power other than the power to investigate problems and issue reports, and so cannot become deeply involved in the process of enforcing the fair housing laws, except to offer advice and information concerning sending complaints to the FEPC.

As a government agency with the official backing of the local government, a human relations commission which received active support in the community and which was used as a forum and center for discussion of problems and for initiating programs to solve the problems could be a valuable tool towards effecting voluntary compliance with fair housing laws.

Unfortunately, such does not seem to be the case in Santa Clara County. San Jose and Palo Alto are the only cities in the county that presently have human relations commissions. (San Jose established its commission in 1958 and Palo Alto established its commission in 1965).

Both commissions have part-time volunteer commissioners - 17 in San Jose (9 Anglo, 1 Japanese, 1 Chinese, 2 Filipino, 1 Chicano, 2 Black and 1 American Indian), and seven in Palo Alto, (4 Anglo, 2 Black, 1 Oriental). The commissions meet once a month and act as a conduit to offer advice to their city councils.

In addition, San Jose has a full time staff of four persons (two Chicano, one Anglo and one Black), while Palo Alto presently has no full time staff.

The San Jose staff acts as a center to receive complaints which it attempts to conciliate or refers to the FEPC for action. San Jose receives approximately 40 complaints per year dealing with fair housing, 35% of which are from Spanish surname persons.

Palo Alto receives only a few complaints a year, which are referred to Mid-Peninsula Citizens for Fair Housing (which is discussed in detail below).

Both commissions are cooperating with and assisting Operation Sentinel (which is described in detail below).

Neither Commission has published any reports in the area of housing, although the Palo Alto Commission is presently working on a landlord-tenant code and the San Jose Commission is planning to institute an auditing survey of discrimination in apartment rentals.

Both commissions seem to suffer from lack of money to publicize their existence, and from a lack of trust on the part of the community since they are part of the city government. This is especially true of the San Jose Commission, which receives most of its complaints not directly, but through referrals from such programs as Model Cities and various community groups not directly active in fair housing.

There is a slight chance that the powers of the human relations commissions will be augmented in the near future. A bill was introduced in the state legislature in 1971 to grant to a human relations commission the power to investigate and hold hearings concerning alleged housing and employment discrimination complaints now referred to the FEPC. The bill, in effect, would substitute the local human relations commission for the FEPC, and give the human relations commission exclusive jurisdiction over complaints in its area.<sup>19</sup>

Although supported by the local human relations commissions, the bill was opposed by the FEPC commissioners, who feared local political influence would jeopardize fair housing enforcement and who feared further weakening of an already weak agency.

Under the wording of the bill, it might have authorized a local fair housing law to be passed where a human relations commission was cooperating with the FEPC.



#### 4. LEGAL AID SOCIETY OF SANTA CLARA COUNTY

Community Legal Services, the Legal Aid Society of Santa Clara County, is funded by the federal government through the Office of Economic Opportunity to provide free legal services to the many poor people of the county. Its clients include many minority group members.

While Community Legal Services helps victims of discrimination to vindicate their rights through court suits, refers victims of discrimination to the FEPC and HUD, etc., it is concerned with fair housing only as one aspect of the many problems of poor persons within the county. Further, Community Legal Services is limited by the limited remedies available under federal and state law, and by the fact that it must wait for cases to be brought to its attention before working for fair housing for a client.

## PRIVATE ORGANIZATIONS

There are many organizations active in Santa Clara County concerned with the social problems, especially those which are racially or ethnically related. However, surprisingly few of the organizations focus on fair housing as their main concern, and even fewer are actively involved in auditing, helping people bring complaints, or locating legal assistance to enable victims of discrimination to enforce their rights.

### 1. MID-PENINSULA CITIZENS FOR FAIR HOUSING:

The most active and effective organization in the county is Mid-Peninsula Citizens for Fair Housing (MCFH). MCFH is based in Palo Alto and concerns itself with the northern part of Santa Clara County, including the cities of Palo Alto, Mountain View, Sunnyvale and Cupertino. Its area of activity also includes southern San Mateo County. MCFH is directed by a board of directors with 15 members, has a small budget with one full time and two part-time staff members, and many volunteers (about 60 Auditors and 20 other active volunteers).

MCFH's goal is "...to secure for all individuals an equal opportunity to purchase or rent property where they choose."

To accomplish this goal, MCFH has a variety of programs. First, MCFH has organized an auditing survey in the northern part of the county, which it is attempting to expand. In auditing, two trained volunteers, usually one black and one white, apartment hunt individually at the same apartment complex.

"Teams should be people who are reasonably alike physically in every way except race, e.g., two women 40-50 years old. When auditing they should dress reasonably alike...and be prepared to give reasonably similar personal information...This eliminates all variables except race."<sup>1</sup>

After the audit is completed, MCFH attempts to communicate with the management of the apartments audited. Where no discrimination has been encountered, a letter is sent to notify the management of the audit and urge it to continue its non-discriminatory policy. If discrimination is encountered, the owner is informed of the practices of the manager. He is urged to correct the situation and assist the achievement of fair housing in his complex. This contact often is done in person.

MCFH has recently undertaken auditing surveys in Mountain View, and Sunnyvale, visiting 73 complexes in Mountain View (approximately 16% of all complexes in Mountain View), with a total of 4100 units and visiting 77 complexes in Sunnyvale (75% of complexes of over 20 apartments in Sunnyvale) with a total of 5455 units.

In Mountain View approximately 60% of the complexes were not detected to discriminate, but a full 40% (31 complexes with 1600 units) showed discrimination. In Sunnyvale, 42 complexes (54.5%) with 2756 units were detected to have discriminated (see Conclusions for methods of discrimination by apartment managers), an incredible 50% of all units in the city.

The information gathered from the auditing activities is used by MCFH to support the complaints of discrimination they help bring to the FEPC and HUD and to provide the basis for federal suits against "a pattern or practice of resistance to the full enforcement of any of the rights" created by Title VIII of the 1968 Civil Rights Act.<sup>2</sup>

The information also is disseminated to city officials and the public at large as part of MCFH's educational and information programs.

In addition to its auditing functions, MCFH actively assists victims of discrimination by confronting discriminators, helping victims bring complaints with the FEPC or HUD, and helping locate volunteer lawyers to bring suits under state and federal law. As one gauge of its activity, MCFH received approximately 20 complaints last year which it passed on to HUD. These complaints constituted approximately 20% of all HUD complaints from the San Francisco area.

MCFH has contracted with a number of major employers, in both the public and private sectors, to assist the employer's minority employees who encounter housing discrimination and to audit areas where the employees are likely to wish to live.

MCFH also participates in and holds educational programs, publishes a newsletter and generally attempts to pass information concerning fair housing to as many persons as possible.

MCFH is one of the most active groups cooperating in Operation Sentinel (to be discussed later).

## 2. STANFORD MID-PENINSULA URBAN COALITION AND OPERATION SENTINEL.

The Stanford Mid-Peninsula Urban Coalition is an association of citizens founded in 1968 to deal with the social problems of the mid-peninsula area of southern San Mateo and northern Santa Clara counties.

The Coalition is organized as a group of task forces, including one on fair housing with approximately 20 members chaired by Mrs. Jing Lyman, wife of the president of Stanford University. Mrs. Lyman is also president of Mid-Peninsula Citizens for Fair Housing and the two organizations cooperate closely in fair housing activities, especially in auditing and in assisting employers with fair housing problems of employees.

At present, the main activity of the fair housing task force is Operation Sentinel, a Bay Area-wide program.

Operation Sentinel is basically a public information program, in English, Spanish and Chinese, consisting of twelve color TV films and twelve radio spots discussing illegal discrimination in housing, as well as posters, brochures, etc. A detailed follow-up of individual complaints concerning alleged discrimination is planned. Partial funding was provided by the National Committee against Discrimination in Housing from a grant NCDH received from HUD. Many other community organizations are also supporting and cooperating with the program.

The most important aspect of the program to gather information concerning discriminatory practices is the telephone number which has been established for reporting cases of alleged discrimination (H-O-U-S-I-N-G). Operation Sentinel will refer complaints to an appropriate local fair housing group where the complaint can be investigated.



As of September 1, 1971, 350 calls concerning discrimination had been received in Operation Sentinel cooperating offices in the nine Bay Area counties. Of these, more than 125 concerned housing discrimination, including 15 from Santa Clara County. Most of the complaints concerned rental housing.

Sixteen complaints were filed with HUD with the assistance of Operation Sentinel volunteers during the months of June, July and August, 1971, and eight other cases were referred to volunteer attorneys for investigation.

Operation Sentinel is unique in the Bay Area in that it has succeeded in uniting the efforts of many of the under-staffed and under-funded groups which are active or would like to become active in the area of fair housing.

### 3. NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING:

The National Committee Against Discrimination in Housing (NCDH) is a national private citizens group with its main office in New York City and regional offices in San Francisco, Washington, D.C., and Raleigh, North Carolina. The San Francisco office has 12 staff workers. NCDH includes as members approximately 50 national organizations including labor unions, civil rights groups, religious and civic organizations.

NCDH was founded in 1950 and has been active since then in publishing information, cooperating in suits to eliminate housing barriers and acting on the national scene to encourage legislation and federal activity to guarantee fair housing.

To accomplish its goals in the Bay Area, NCDH has organized a "Project Strike Force" funded by a \$250,000 grant from the Department of Housing and Urban Development. The purpose of the project is:

"to develop . . . an intergovernmental instrument . . . that can deal systematically with the problems of race, residence, economics and related opportunities, set goals for the region and local areas and require their implementation . . . "3

The strike force is intended to:

"marshall the forces of employers, unions, the housing industry, federal, state, regional and local agencies, civil rights, religious and fair housing groups and other public interest bodies to:

a. Achieve an open housing market . . . "4

To accomplish this and its other goals the Strike Force will inventory jobs, transportation and housing needs and supply, create programs to bring change and campaign for public support for the programs.

Santa Clara County has been chosen as a target area for the strike force "because of the developing pattern of discrimination observed there, i.e., an antagonism to Mexican-Americans but a much greater antagonism to blacks."5

NCDH does not handle individual housing complaints, and doesn't become involved in litigation unless the effect of the suit will be likely to have broad national effects.

NCDH actively is involved in public relations through its many publications, speaking programs, radio and T.V., advertising etc., in both Spanish and English.

As part of its Strike Force, NCDH is partially funding Operation Sentinel, previously described.

#### 4. CALIFORNIA HOUSING COALITION:

The California Housing Coalition (CHC) is a lobbying coalition of organizations dedicated to equity in the housing market. There are presently approximately 200 member organizations, including Mid-Peninsula Citizens for Fair Housing. Since it is a lobbying organization, donations to CHC are not tax deductible, and so most of CHC's funds come from membership dues. CHC has a board of directors of seven members who decide on policy, goals, programs and activities. Four of seven members are minority persons, although the paid staff and volunteer workers are predominately white. The Coalition does not handle individual complaints of discrimination.

CHC has recently proposed 35 bills to the state legislature, which, if enacted, would help eliminate housing discrimination, many economic problems in housing and would significantly change landlord-tenant relations.<sup>6</sup>

One of the bills would strengthen the Rumford Act, extend its sphere of coverage and create criminal penalties for violators.<sup>7</sup>

#### 5. OTHERS:

There are many other private organizations in Santa Clara County which deal with various social problems and community relations. Although their main focus is not fair housing, they periodically become involved with fair housing problems or expect to do so in the near future.

##### NAACP:

The National Association for the Advancement of Colored People has a chapter at Palo Alto - Stanford which presently is not active in fair housing, but is planning to create action programs in the future.

##### THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN:

The American Association of University Women is part of a national organization interested in achieving equal rights for individuals and promoting education for members of the community. There are six branches within Santa Clara County. The AAUW recently completed a housing study in Santa Clara County, and recommended the establishment of a county human relations commission, recommended adoption of the legislative package of the California Housing Coalition and agreed to become more actively involved in cooperation with the Mid-Peninsula Citizens for Fair Housing auditing program. To date, their efforts have been directed only to legislative change, with no handling of individual complaints. A group of members are presently working to make the organization more action-oriented in housing problems.

##### CHURCH GROUPS:

Several church groups have attempted to actively work to solve housing problems.



St. Thomas Episcopal Church in Sunnyvale attempted to become a low income housing development sponsor in Alviso but the project fell through. The Church occasionally receives complaints about discrimination and refers the complainant to MCFH.

Guadalupe Church in East San Jose has a large minority congregation. The church allows many people to live in its buildings while they search for jobs and housing. From the experiences of these temporary residents, the pastor has discovered there is much discrimination against large minority families and against single men. The pastor stated that both the Santa Clara County Legal Aid Society and the San Jose Human Relations Commission had been largely ineffective in dealing with the housing problems of his parishoners.

Catholic Social Service of Santa Clara County (San Jose and Gilroy) does not handle housing discrimination problems directly, but refers victims of discrimination to California Rural Legal Assistance (CRLA). The Gilroy office reports two or three cases of alleged discrimination in housing per week, most of which deal with large Mexican-American families.

#### ETHNIC ORGANIZATIONS:

The Mexican-American Community Services Agency (MACSA) deals primarily with education of Chicanos. All fair housing problems are referred to other agencies such as Model Cities and the Human Relations Commission. MACSA would like to become more involved in housing problems but lacks adequate funds and personnel to do so.

The Mexican-American Opportunities Center primarily helps Mexican-Americans find suitable employment and is not staffed to handle housing problems effectively.

The Business and Professional Guidance Council of California (BPGC) was formed by Mexican-Americans in order to enable Mexican-Americans to become involved in the redevelopment of low income areas. BFGC presently has no staff and does not handle individual housing complaints.

## CONCLUSIONS

Several conclusions emerge from the materials and information we have reviewed thus far.

### I. ORGANIZATIONS AND AGENCIES ENFORCING FAIR HOUSING:

1. *There is no effective government agency in Santa Clara County working to enforce or promote compliance with the fair housing laws.* While the FEPC and HUD both purport to be involved in enforcement procedures for the state and federal laws, it seems clear that their existence has little, if any, effect on the activities of the institutions which constitute the real estate sales or rental markets. Several reasons can be specified for this situation.

First, neither agency maintains an office within the county and neither advertises its existence extensively. The effect is that there is little knowledge concerning the agencies among those victimized by discriminatory acts. Also, as a result of being located in San Francisco, the agencies cannot expect many persons without ample resources to personally lodge a complaint. Needless to say, the ineffectiveness of most private organizations greatly contributes to this problem.

Secondly, the procedures of the agencies are slow and tedious, necessitating in many cases multiple trips to San Francisco. In addition, the slowness of the procedures means that most persons discriminated against must find alternative housing regardless of the ultimate outcome of their complaint to either the FEPC or HUD. This requirement strongly militates against filing a complaint.

Thirdly, the final remedy of a successful complaint is not sufficient to create a strong incentive to see the complaint through the process. The maximum recompense that the FEPC can grant is only \$500 and that amount can only be granted if the same unit or a similar unit is not and cannot be made available. Since in most cases the complainant will recently have moved, it is unlikely that he will be willing to move again and so a discriminating landlord or seller can probably offer a unit to avoid the liability for \$500 without fear of actually having to complete the transaction. Thus, of the 1691 cases completed by the FEPC in California between September 1963 and March 31, 1971, only 24 hearings (1.4% of the disposed cases) have been held, a necessary step to the granting of damages. HUD also has not completed its administrative procedures for many cases filed during the fiscal year of 1971 and has not granted damages to the complainant in many cases.

Fourth, both agencies recognized that they are not fully trusted by the minority communities in the County, the very persons who are the victims of discrimination. As a result, many complaints will not be brought because the agencies are viewed as being part of the "establishment" which is discriminating and unfairly treating the victims.

The two human relations commissions are also government agencies, being creations of the city governments. They presently have no enforcement powers to help the victim or threaten the discriminator. In addition, their ability to influence is a function of the activist role they take and the amount of moral suasion they can bring to bear on the institutions of the housing market. Neither Commission has been active in fair housing and neither has attempted to assist victims of discrimination to bring complaints before the FEPC or HUD on a regular basis. In addition, of course, much of the county does not even have a Human Relations Commission.

2. *Just as there is no effective public agency, there is no effective private agency on a county-wide basis.* While Mid-Peninsula Citizens for Fair Housing has established an auditing procedure in the northern part of the county, along with educational and informational programs, its activities have not really become visible in much of the county.

MCFH has assisted persons to take complaints to HUD and the FEPC and is the most active and effective agency in the county, but its size is minute compared to the problem, and it cannot help more than a relatively small number of persons at the present time.

Operation Sentinel, coordinated by the Stanford Urban Coalition, may be highly effective, especially in creating clear lines of communication for victims of discrimination. But it is brand new and cannot yet be measured for effectiveness. In addition, much of its long lasting effect will depend on vigorous and fast action in countering discrimination directly or in depending on fast action by the FEPC and HUD. If the private and public agencies involved cannot show that complaints will be dealt with effectively, the project will not attract nearly as much support and information as it has been designed to elicit.

3. *There are no local minority-run organizations actively involved in fair housing.* Although there are several Mexican-American groups actively involved in social and political issues in the county, and although there is a chapter of the NAACP in the county, there is no Chicano or black organization which sees its main activity as the area of fair housing. The effect of this situation on compliance with fair housing is two-fold. First, there is no group easily identifiable with one's own community for most victims of discrimination. This is especially important for a Spanish-speaking resident of the county, since he has no peer to turn to for information and help. Secondly, there is little political pressure generated by the minority groups in the county to influence the county and city governments to take more active roles in the area of fair housing.

4. *An important result of the prior conclusion is that there is no information and education program which affects most people in the county, either those directly involved in the institutions of the housing market or those who attempt to find housing within the community.* Operation Sentinel is the first large-scale effort to attempt to meet this problem, and hopefully, it will succeed. However, a long-term program is needed, which would include local government, schools, community organizations and housing institutions on a regular and recurring basis. Without such a program, the present ignorance of the law will continue, with the harmful effects it has already created.

5. *The County of Santa Clara has failed to meet its own responsibilities to assist its residents, cooperate with state and federal agencies and establish programs to aggressively and forcefully make fair housing an important county policy.* The county has not created a human relations commission or adopted any programs to educate residents of the county to their rights and duties under the laws. The county has never offered its resources to help citizens bring complaints to the FEPC or HUD and has never established an educational and informational center to coordinate fair housing activities within the county. It has never offered any resources to assist public or private agencies in their activities.



It is essential that the county reverse its lack of commitment and adopt programs and policies to meet the situation it has helped create by inaction.

## II. THE ACTORS WITHIN THE SALES HOUSING MARKET:

6. *There is a legacy of discrimination which exists within at least some real estate brokerage offices within the County.* While the county Boards of Realtors have adopted national policies that advocate the elimination of discrimination, the policies have been confused by other aspects of their codes and practices. Many brokers still are not familiar with the fair housing laws and are unaware of the illegality of some activities.

Further, the day to day operation of a broker's business places him in positions in which he has an opportunity to reflect the prejudices of others, or even to anticipate them. The broker who perceives non-discrimination to be a threat to his future business has not disappeared and still may ignore general precepts in the personal interest of his future economic status. We uncovered instances of this problem during the study.

However, it must be acknowledged that a higher degree of compliance with the fair housing laws appears to occur in the sales market in general, including the real estate brokers.

7. *Mortgage lenders in general do not overtly discriminate in their activities.* However, to the extent that they choose areas in which loans will not be made due to "market conditions", etc., they are acting in a manner which has discriminatory results. In addition, the exclusion of the wife's income from family income and other economic practices have the effect of reinforcing the pre-existing discrimination of the greater society and of eliminating opportunity for minority persons.

8. *Sales developers in general seem to be less discriminatory than the rental market.* However, at least some of the developers are strongly prejudiced and discriminate on a regular and continuing basis. Such developers may discriminate by "steering" minorities to one of a group of developments, by outright denial of opportunity to purchase, by uneven treatment, etc..

## III. THE ACTORS IN THE RENTAL MARKET:

9. *Apartment managers perform regular and continual housing discrimination within their apartment complexes.* According to some reports, the discrimination reaches as high as 50% of all apartments in Sunnyvale and 40% of the apartments in Mountain View. Several techniques are used by apartment managers in their discriminatory activities. Minority persons have been told no apartments are available when units actually are. Higher rent is quoted or charged to minority persons. Later availability dates are given to minority persons. Dirty and damaged apartments are shown to minority prospective tenants. Credit checks are required for minority persons that are not required for others. Higher deposits and cleaning fees are charged. Managers refuse to answer the door when they see a minority person knocking. Also, even when a tenant, a minority person may be subject to eviction for less cause, unusual rent rises, etc..

Part of this discrimination may be based on ignorance of the law, since few managers apparently know of the existence of the fair housing laws. But much of the activity is clearly based on prejudice, fear concerning the reaction of majority tenants, fear concerning apartment upkeep and other illegal reasons.

This area of the housing market is the one which must become the major target for remedial programs and activity in the future.

#### IV. TRAILER PARKS:

*10. Although not included within the study, trailer parks were accused of regularly discriminating, especially against blacks, by several interviewees.* This allegation should be explored in the future.

At present, trailer parks are subject to the Unruh Act and 1866 Civil Rights Act, but may not be covered by the Rumford Act or Title VIII of the 1968 Civil Rights Act. This loophole should be closed, even if only a few parks are found to discriminate.

#### V. ECONOMICS AND DISCRIMINATION:

*11. There are important economic aspects to the fair housing problem in Santa Clara County.* As has been stated many times, minority residents of the county tend to have lower incomes than majority white residents. As a result, there are fewer units of housing available and limited areas in which housing can be afforded. The economic fact limits the ability of minority families to move from presently segregated areas and prevents the balancing of population within the county.

According to figures from the FEPC and HUD, and from our interviews, there appears to be a higher level or incidence of discrimination at lower income levels of the housing market. Thus, a minority person with a high income is less likely to be refused the right to buy a house or, to a lesser extent to rent an apartment, than one with middle or low income.

Of course, as is shown by the statements of the managers of some so-called "luxury" apartments and one developer who showed overt discriminatory tendencies, discrimination may still be encountered at all levels of the housing markets in the county. The effects of economics should not be ignored, but neither should the effects be over-emphasized or called the main cause of the problem.

## FOOTNOTES

### FAIR HOUSING LAWS

1. Cal Civil Code, sections 51 and 52.
2. Cal Civil Code, section 51
3. See, e.g., *Swann v Burkett* (1962) 209 CA 2d 685, 26 Cal Rptr 286.
4. *Don Wilson Bldrs v Superior Ct for LA Co.* (1963) 220 CA 2d 77, 33 Cal Rptr 621; *Burks v Poppy Constr. Co.* (1962) 370 P2d 313, 57 C2d 463, 20 Cal Rptr 609.
5. *Crowell v Isaacs* (1965) 235 CA 2d 755, 45 Cal Rptr 566; *Lee v O'Hara* (1962) 370 P2d 321, 57 C 2d 476, 20 Cal Rptr 617; See also 34 *Ops Atty Gen* 230.
6. *Holmes v Bank of America* (1963) 216 CA2d 529, 20 Cal Rptr 609.
7. *Swann v Burkett*, op. cit.; *Thomas v Goulis* (1966) 413 P2d 854, 64 C2d 884, 50 Cal Rptr 910.
8. 40 *Ops Atty Gen* 174.
9. *Wagner v O'Bannon* (1969) 274 ACA 141, 79 Cal Rptr 44.
10. *Holmes v Bank of America*, op. cit.
11. See, e.g., *Peyton v Barrington Plaza Corp.* (1966) 413 P2d 849, 64 C2d 880, 50 Cal Rptr 905.
12. Cal. Civil Code, section 52.
13. Cal Health and Safety Code (H & S) sections 35,700 et. seq.
14. H & S, section 35,700.
15. H & S, section 35,720.2.
16. H & S, sections 35,710.2-.6 and section 35,720.
17. H & S, section 35,710.3.
18. See Cal Constitution, Article 13, section 1 (d).
19. H & S, section 35,710.4.
20. Ibid.
21. H & S, section 35,720.6.
22. H & S, section 35,720.7.
23. H & S, section 35,720.8.
24. H & S, section 35,730; see Labor Code, section 1410 et.seq. See also, "Equal Opportunity in Jobs and Housing", pamphlet published by the FEPC in March, 1969.
25. H & S, sections 35,730.5-35,738.
26. See H & S, section 35,738.
27. *Jones v Mayer* (1968) 392 US 409 at 413-414.
28. Ibid.
29. *Jones v Mayer* determined in 1968 that the 1866 Civil Rights Act applies to private actions as well as actions by states. Thus, only since 1968 has the Act been widely available for use as a weapon against housing discrimination by private individuals. But see *Hurd v Hodge* (1948) 334 US 24, 68 SCt 847, 92 L.Ed. 1187.
30. 42 USC 3601 et seq. See "Fair Housing Laws and Other Federal Civil Rights



Laws and Executive Orders Relating to the Programs of the Department of Housing and Urban Development" (Jan. 15, 1969), "Your Housing Rights" (June, 1969) and "Fair Housing, U.S.A." (July, 1970) - pamphlets published by the U.S. Department of housing and Urban Development.

31. 42 USC 3603.
32. 42 USC 3605, 3606, 3607.
33. 42 USC 3604.
34. 42 USC 3617, 3631.
35. 42 USC 3608, 3610, 3611
36. 42 USC 3610 (c).
37. Ibid.
38. See Public Agencies, 1. The Department of Housing and Urban Development, *infra*.
39. 42 USC 3612.
40. 42 USC 3613.

#### REAL ESTATE BROKERS AND SALESMEN

1. Much of the information and analysis in this section is based on questionnaire responses. Since respondents were promised confidentiality, no identification of individuals will be made. For general information, see Davis McEntire, *Residence and Race*, 1960, U of Calif. Press, Berkeley and Los Angeles; Rose Helper, *Racial Policies and Practices of Real Estate Brokers*, 1969, U of Minn. Press, Minneapolis.
2. See Cal Business and Professional Code (B & P) ch. 3, sections 10,130 et seq.
3. B & P, section 10,131.
4. B & P, sections 10,153-10,153.5.
5. McEntire, *op. cit.*, see ch. XIV, esp. pp. 244-248; Helper, *op. cit.*, see ch Vii and VIII, esp. pp. 230-238.
6. Interviews with staff members of both HUD and FEPC. Approximately 30% of the complaints received deal with housing sales and many of these complaints concern brokerage activities.

#### REAL ESTATE LENDERS

1. Much of the information and analysis in this section is based on questionnaire responses. Since respondents were promised confidentiality, no identification of individuals will be made.

#### SALES DEVELOPERS

1. Much of the information and analysis in this section is based on questionnaire responses. Since respondents were promised confidentiality, no identification of individuals will be made.

## APARTMENT COMPLEX MANAGERS

1. Much of the information and analysis in this section is based on questionnaire responses. Since respondents were promised confidentiality, no identification of individuals will be made.
2. Interview with MCFH staff. See MCFH reports and statements to City Council of Mountain View, Aug. 30, 1970 and City Council of Sunnyvale, Mar. 12, 1971.
3. National Committee Against Discrimination in Housing, "Highlights and Excerpts from Report on NCDH Urban Demonstration Project," p. 8.

## PUBLIC AGENCIES

1. See Fair Housing Laws, *supra* p. 3 for details of statutes.
2. 42 USC 3608.
3. Prior to October, 1970, the San Francisco Regional Office also was responsible for fair housing enforcement in the states of Alaska, Idaho, Montana, Oregon, Utah, Washington and Wyoming.
4. Certain complaints received were in the jurisdiction of HUD but not that of the FEPC. Usually the complaints concerned events that occurred before the 60 day limit set by the Rumford Act.
5. See "Fair Housing Laws and Other Federal Civil Rights Acts and Executive Orders Relating to the Programs of the Department of Housing and Urban Development" (Jan. 15, 1969); "Your Housing Rights" (June, 1969); "Fair Housing, U.S.A." (July, 1970) - pamphlets published by the U.S. Department of Housing and Urban Development.
6. See *supra*, pp. 3-5, for details of the Rumford Fair Housing Act.
7. Cal Labor Code, section 1414.
8. H & S, section 35,738.
9. See FEPC Report on "Housing Case Statistics 9/30/63 through 3/31/71".
10. Interviews with FEPC staff. See newspaper accounts of the fight over Proposition 13 in 1964. See also, McEntire, *op. cit.*, and Helper, *op. cit.*
11. For example, "Equal Opportunity in Jobs and Housing" (March, 1969); "Opening the Door": "You Have the Right to Equal Opportunity for Good Housing" (poster); etc.
12. A.B. 878, introduced in 1971 by Assemblyman Dunlap.
13. Cal Government Code, sections 50,260-50,265.
14. Govt., section 50,264 (a).
15. Govt., section 50,264 (b).
16. Govt., section 50,264 (c).
17. Govt., section 50,264 (c).
18. Govt., section 50,264 (d).
19. A.B. 878, introduced in 1971 by Assemblyman Dunlap.

## PRIVATE ORGANIZATIONS

1. MCFH auditing instruction sheet.
2. See *supra*, p. 7.
3. NCDH, "Highlights and Excerpts". *op. cit.*, p. 1.
4. *Ibid.*, p. 2.
5. *Ibid.*
6. See "The California Housing Coalition 1971 Legislative Package".
7. *Ibid.*

## RECOMMENDATIONS

1. Preliminary Draft for Santa Clara County Joint Cities-County Housing Element, February, 1971.
2. See *Ibid.*, pp. 11-13.





## PUBLICATIONS OF THE JOINT CITIES-COUNTY HOUSING ELEMENT PROGRAM

### A. Staff Reports

- \*1. Catalog of Federal Housing Assistance, June 1969
- \*2. Directory of Organizations and Agencies Concerned with Housing in Santa Clara County, June 1969
- \*3. Interim Report, Countywide Housing Element Program, Phase I, June 1969.
- \*4. Summary: The Douglas Commission Report, August, 1969
- \*5. The Housing Situation: 1969, December 1969
- 6. The Cost to Occupy Housing, October 1970
- 7. Housing Codes, November 1970
- 8. Tenant-Landlord Problems, November 1970
- 9. Housing Space Standards, November 1970
- 10. Zoning and Housing, December 1970
- 11. Social Concerns in Housing, October 1971
- \*12. Joint Cities-County Housing Element, 1971, November 1971
- 13. State Legislation on Housing, 1971 Legislative Session, August 1972
- 14. Directory of Federally Assisted Housing and Housing Sponsors, April 1973

### B. Reports Sponsored by the Joint Program

- 1. University of California, Extension, Santa Cruz, A Search for Solutions, Summary of the Findings of the South Bay Regional Housing Conference, July 1970
- \*2. Mazur, Allan, A Comparative Study of the Perceived Housing Needs of Low-Income and Upper-Middle-Income Residents of San Jose, The Laboratory for Social Research, Technical Report No. 41, Stanford University, Stanford, California, 1970
- \*3. Human Research Associates, Housing Needs and Attitudes Among a Selected Sample of Non-Rural Residents in Santa Clara County, unpublished paper, Palo Alto, November 1970
- \*4. Urban Resources Development Project, Development of a Santa Clara County Housing Model--Phase I, Stanford University, Stanford, California, 1970
- 5. Nonprofit Housing Center, Inc., San Jose Housing Development Corporation, Prospectus and Final Report, May 1971. (Co-sponsored by The Association of Metropolitan San Jose, the City of San Jose, and the Joint Cities-County Housing Element Program.)
- 6. Stuart Deutsch, et al, Fair Housing in Santa Clara County, April 1973

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\*Reports no longer available.





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